



CUNA & Affiliates

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**WRITTEN TESTIMONY OF
KAYCE BELL
CHIEF OPERATING OFFICER
ALABAMA CREDIT UNION
TUSCALOOSA, ALABAMA
ON BEHALF OF THE
CREDIT UNION NATIONAL ASSOCIATION (CUNA)
BEFORE THE
HOUSE COMMITTEE ON FINANCIAL SERVICES
ON
“H.R. 2622: THE FAIR AND ACCURATE CREDIT TRANSACTION ACT OF 2003”
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Good morning Chairman Oxley, Ranking Member Frank, and members of the Committee. I am honored to appear before you this morning to present testimony on H.R. 2622, the Fair and Accurate Credit Transactions Act of 2003, introduced by Representative Bachus, in whose district where my credit union is located. I am Kayce Bell, Chief Operating Officer of the Alabama Credit Union in Tuscaloosa, Alabama. Alabama Credit Union is a \$165 million dollar not-for-profit financial cooperative with 24,000 members, primarily serving the faculty, staff, students, and alumni of the University of Alabama. I appear before you this morning on behalf of the Credit Union National Association (CUNA), which represents over 90 percent of the nation's approximately 10,000 credit unions and their 83 million members.

Title I – Uniform National Consumer Protection Standards

CUNA and America's credit unions wholeheartedly support permanent reauthorization of the expiring uniform national standards of the Fair Credit Reporting Act (FCRA).

The FCRA is responsible for bringing the consumer reporting industry under federal law, providing consumers with certain rights and protections and imposing duties and obligations on the industry and financial services providers that supply and use this information. The Members of this Committee should focus on striking a balance between consumer privacy protection and the interests of the industry for efficiency, accuracy and convenience, while examining H.R. 2622, the “Fair and Accurate Credit Transactions Act of 2003.”

As of January 1, 2004, if the broad set of preemptions that apply to the seven key provisions of FCRA are not reauthorized, the resulting potential problems for financial institutions and consumers could consist of: slower credit approval; higher cost of credit; additional paperwork; and, less confidence in credit reports, among many other unintended and unforeseen difficulties.

According to the Financial Services Roundtable, the current credit reporting system saves consumers an average of \$195 a year, due to the increase in competition as well as the seamless

transfer of data. Information sharing has lowered the cost of credit via increased competition through increased access to credit, lower interest rates and lower default rates.

If individual states adopt their own laws regulating credit reporting agencies and the management of the data, consumers will be subject to a confusing and overwhelming patchwork of requirements. Portability will be difficult. Moving to a different state, or taking a vacation could become much more complicated. Borrowers will have to establish a new credit record each time they travel to a different state. According to Michael Staten, of Georgetown University, 42 million Americans move each year and over 6 million own vacation and second homes, many in states other than their primary residence.

The voluntary system of reporting could become extremely vulnerable to inconsistent and conflicting state regulations. If it becomes too costly, this could easily trigger a decline in the reporting system altogether. Along with a decline in reporting would come a decline in confidence in the system because creditors will not know what is missing from reports and will be unable to accurately rate the riskiness of potential borrowers with the information provided. Healthy reliable borrowers will be suspect in states where creditors have no access to adverse information.

Consumers' personal information would be less accurate and secure in a balkanized, patchwork national system. A more precise uniform regulation, held to federal standards, has great potential to continue to provide credit to those who might not have opportunities under state regulations, because it will be easier to fairly price credit and rate credit worthiness. Greater access to credit is particularly important to those of low to moderate incomes, as well as to many small business owners. In fact, Michael Staten also pointed out that ready access to low-cost credit has boosted small business startups, with nearly 7 out of 10 small business owners starting their business with less than \$20,000.

In general, consumers, particularly credit union members, have grown to expect instant access to credit when applying for car loans, mortgages and home equity loans. Despite major dips in the national economy, the housing industry, including first time home purchases, second home or vacation home purchases and mortgage refinancing has remained exceptionally strong. Much of this is due to the increased access to instant credit.

According to Treasure Secretary John Snow, the uniform national standards expand "opportunity for every consumer to access credit and financial services."

Alan Greenspan, Chairman of the Board of Governors of the Federal Reserve, testified in front of this Committee in April that "unless we have some major sophisticated system of credit evaluation continuously updated, we will have very great difficulty in maintaining the level of consumer credit currently available because clearly, without the information that comes from various credit bureaus and other sources, lenders would have to impose an additional risk premium because of uncertainty before they make such loans or may, indeed, choose not to make those loans at all...it is clearly in the interests of consumers to have information continuously flowing into these markets. It keeps credit available to everybody, including the most marginal

buyers. It keeps interest rates lower than they would otherwise be because the uncertainties which would be required otherwise will not be there.”

To sum up, Secretary Snow said it best in his announcement last week: the uniform national standards in the FCRA “have led to the democratization of credit.”

The heart of the American economy is based on freedom and opportunity. Preserving the uniform standards of a national credit reporting system maintains and even expands these basic economic opportunities for all Americans. CUNA applauds this committee’s efforts to make the uniform national standards permanent and commends you for taking swift action so this legislation can be sent to President Bush for a signature before the first session of the 108th Congress adjourns.

Title II - Identity Theft Prevention

We commend the sponsors of this legislation for addressing the very serious problem of identity theft. As we all know, identity theft is increasing and, by some estimates, is expected to victimize nearly one million people this year. It has already claimed approximately 11 million victims. It creates havoc with people’s personal lives and “tears at the fabric of commerce in our information age,” as Treasury Undersecretary for Financial Institutions Wayne Abernathy aptly described it in March.

To underscore the role of a credit union in combating identity theft, I’d like to tell a story. We have a member who is a consultant and travels abroad much of the time. An unsolicited credit card offer was mailed to a temporary address that he had briefly used once while completing a consultancy project for Georgia Tech. Not a user of credit, our member had no idea that \$15,000 worth of unsecured debt had been issued to him, became delinquent, and was charged off. The fraud appeared when Alabama Credit Union offered the member our VISA card, pulled his credit report, and found the credit card charge-off. The card issuer declined to work with the member to resolve the issue, but Alabama Credit Union outlined a course of action, assisted him in contacting all credit bureaus, drafted a statement to be read to purchasers of his credit report, and provided him with information in following up to ensure his credit reports now contained the correct information and dispute notice. Since the member had applied for no credit while residing at the temporary address, it appears the mailing may have been generated from the purchase of a residents list, and not information obtainable from credit bureaus under FCRA. Had the card issuer used credit information as permitted, the address to which the card offer was sent would have been the borrower’s permanent address, and the fraud could have been avoided.

CUNA has already taken steps to help arm our members with information and actions they can take to minimize the risk of identity theft and expedite the recovery. CUNA first reported to our membership on identity theft in the fall of 1996 and has been writing articles on the subject for our membership ever since. As of January 2000, we began providing our credit unions with statement stuffers for members entitled “Guard Your Plastic Cards” and “ID Theft: How to Prevent It and How to Get Over It”. CUNA is also a member of BITS, the Technology Group for the Financial Services Roundtable, where extensive efforts have been ongoing with respect to identity theft prevention.

Section 201

We support the identity theft provisions in general and think that they will significantly reduce the occurrence of identity theft. Section 201 calls for the investigation of changes of address. We think this procedure will be a sound identity security practice. However, this change will require more hands-on employee activity for credit unions. We will need some time to change our systems to track these two events. We would recommend a year before this provision becomes effective.

Section 202

Section 202 requires the consumer reporting agencies (CRAs) to include a fraud alert in the consumer's file when requested and notify all users of the existence of a fraud alert. Credit unions are users, so will be subject to the subsection (3) prohibition regarding the issuance or extension of credit. We support this provision because it provides protection to consumers. However, we would like to draw your attention to the fact that Section 202 does not address under what circumstances and procedures the fraud alert would be removed and the users would no longer be subject to subsection (3). Our experience with our members suggests that a return to normal procedures is usually welcomed when the threat has passed. Our members, like other consumers, want financial services to be provided in the most efficient and expeditious way. We would also like to request a reasonable amount of time in order to put a system implementing subsection (3) into place.

Section 203

Section 203 calls for the truncation of credit card and debit card account numbers. We are credit card issuers and we think this is another sound security practice that will help protect our members from identity theft. There will be equipment costs associated with compliance that will in turn be passed on to our members. For this reason, we commend you for including a reasonable time period for purposes of compliance.

Section 204

We commend the cosponsors for providing for a summary of rights for identity theft victims in Section 204. Subsection (b) requires the Federal Trade Commission (FTC) to "develop guidelines for model policies and model procedures" with regard to the victims' summary of rights. We share the same goal: providing our members with the benefits of the most effective and efficient procedures for remedying the effects of identity theft. As financial institutions, we have a valuable and necessary perspective as to how victims can be helped in the most efficient and practicable way. For this reason, we want to express our interest in being part of the process of developing these guidelines and would hope that the FTC will provide us with such an opportunity. We would further suggest that the FTC act first to develop these guidelines and that the consumer reporting agencies work from these guidelines to develop the victims' summary of rights. As you are aware, a working group composed of the FTC, credit grantors and consumer advocates has developed an ID Theft Affidavit. We know of at least 20 credit unions that have endorsed the use of the Affidavit.

Section 205

Section 205 calls for the blocking of information resulting from identity theft by the consumer reporting agencies. We support the provision but do have a real concern that some consumers may file bogus police reports to remove correct derogative information on a credit report so as to obtain credit. We commend the sponsors for requiring that the consumer reporting agency promptly notify the furnisher of information about the request for the block. We are furnishers of information and we need to know when there has been a request for a block. We would recommend that the consumer reporting agency also be required to notify the furnisher of information when the agency declines or rescinds the block under the section. We should be made aware of that information as well.

Section 206

Section 206 requires the establishment of procedures for depository institutions to identify possible instances of identity theft, i.e., “red flag” guidelines. In so doing, the operative definition for federal banking agencies in section 3 of the Federal Deposit Insurance Act does not include the National Credit Union Administration (NCUA), our federal regulator. We would ask that this provision be modified to include the NCUA. The “red flag” guidelines will be a very useful tool in the arsenal being assembled in this bill against identity theft. We would request, however, that there be a good faith standard in any compliance requirement imposed on depository institutions so as to protect us from unwarranted liability.

Title III – Improving Resolution of Consumer Disputes

Section 301

Section 301 requires the FTC to prescribe rules for the coordination of consumer complaint investigations. We think this idea is an excellent one, particularly if it results in a system whereby the victim need only report the identity theft once to a single entity. This could be the equivalent of calling 911, a system that is universally used today. Further, to be successful, the dissemination of information, both in the initial reporting stage and for correction purposes (if, for example, the information is bogus), will have to be very efficient. Section 301 also requires the FTC to develop model forms and procedures to be used by victims for purposes of informing creditors and CRAs. This would help credit unions help victims by expediting the initial stage of an investigation.

Section 303

Section 303 calls for a study by the Board of Governors of the Federal Reserve System and the FTC on how CRAs and furnishers of information are handling disputed consumer information. With respect to furnishers, it appears that the study will focus on the furnishers’ maintenance of full and prompt compliance with the responsibilities under Section 623 of the Fair Credit Reporting Act. Since these studies will include recommendations to Congress for legislative or administrative actions, we again would appreciate the opportunity to provide input to these studies. We have considerable experience as furnishers and would like to contribute to these studies.

Title IV – Improving Accuracy of Consumer Records

We support Title IV in general and applaud the sponsors' efforts to address this issue, given its vital importance to all consumers, as well as to the integrity of the credit reporting system itself. We concur with the National Association of Realtors in strong support of these provisions.

Section 401

In the event someone requests a consumer report and the address of the consumer is significantly different from the most recent address in the file, the CRA is required under this section to notify the requester of the discrepancy and reconcile the difference within 30 days. We think this provision is another prudent measure to combat identity theft. We read this provision in its current form as not constraining the credit grantor from conducting a quick investigation so as to avoid losing the opportunity to complete the transaction. We say this because there will be instances where the credit union can very quickly (e.g., within hours) resolve the discrepancy and should then be able to complete the transaction.

Section 402

This section provides that furnishers may not report information to CRAs that the furnisher knows "or has reason to believe" resulted from fraudulent activity, including identity theft. While we certainly understand the intent, we are concerned that the "reason to believe" language will be problematic. This language is not well defined and therefore subject to interpretation which will lead to more lawsuits and/or enforcement actions.

Section 403

Section 403 requires assignees, agents, and debt collectors as defined in Title VIII to notify creditors regarding fraudulent information that may be the result of identity theft. This section provides an additional weapon in the arsenal by creating another channel of communication back to creditors regarding fraudulent information that may be the result of identity theft. This will serve as another tool for credit unions to help our members identify the existence of identity theft.

Title V – Improvements in Use of and Consumer Access to Credit Information

We support Title V in general and commend the sponsors for providing consumers upon request with a credit report and credit scores, including a summary of how the scores were derived and how the consumer can improve the scores, at no charge and on an annual basis. We wish to associate ourselves with the position of the National Association of Realtors in strong support for these provisions.

Sections 501 and 502

We fully recognize that providing consumers upon request with the above credit information will result in indirect costs. We believe, however, that such costs will be significantly outweighed by the benefits to our members in terms of a better understanding of their credit status. Credit unions are committed to enhancing the financial education and financial literacy of our members. We view this as an ongoing effort and are always looking for ways to do a better job. These provisions will give us just that opportunity. We strongly feel that the more our member

knows, the better able he or she is to make sound financial decisions. This is an effective means of combating predatory lending and will enable credit unions to provide an alternative to these abusive lending practices. We are confident that the costs associated with these provisions will be significantly reduced over time as the use of secure electronic communications increases.

Section 503

Section 503 requires CRAs to make its notification system easier and simpler for consumers to remove their names from the list used for credit or insurance offers not initiated by the consumer. While credit unions make prescreened offers, we support this provision because it will benefit our members who do not wish to receive such offers. We also support the development of “a simple and easy to understand format” as part of any credit or insurance prescreened offer for use by the consumer in exercising his or her right to notify the notification system for purposes of removal from the list.

Title VI – Protecting Employee Misconduct Investigations

Section 601

Section 601 addresses the Vail Letter, an FTC staff opinion issued in 1999, which suggested that investigations of employee misconduct performed by an outside party can be considered a “consumer report” which triggers the requirement that the accused must be notified of the investigation and provided with the names of the accusers. This section changes this by providing that communications to an employer by outside third parties hired to investigate employee misconduct will not be considered “consumer reports.” Under this section, if any adverse action is taken based on the communications, the employer must provide the employee with a summary of the communications upon which the adverse action is based. The sources of the information need not be disclosed.

We believe that the current FTC position is a problem. It allows the accused to cover his or her tracks because he or she knows of the investigation and can harass the accusers. We support this provision because we think it will rectify this situation and lead to an improved work environment. Credit unions are typically small institutions and we may well need to use a third party to conduct the investigation. The Vail Letter has been an obstacle for credit unions; one that we think has improperly impeded the investigation of employee misconduct.

Conclusion

In conclusion, CUNA strongly supports the permanent extension of the preemption provisions of the Fair Credit Reporting Act. Making these national standards permanent is a critical element in assuring that our nation’s consumers have easy access to credit and that they receive fair and appropriate protections of their personal financial information. Our economy depends on it, and our citizens deserve it.